

EXHIBIT I

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: May 28, 2020

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

Judge: Hon. Jon S. Tigar

1 The parties submit the following joint statement in advance of the May 28, 2020
2 Case Management Conference. The parties exchanged their respective sections at
3 approximately 2:00 p.m. today.

4 **I. PLAINTIFFS' STATEMENT**

5 **A. CDCR Must Transfer Vulnerable Patients from Dormitories to Cells**

6 The public health recommendations for preventing transmission of the virus that
7 causes COVID-19 are well known and undisputed. Dr. Arthur Reingold, Division Head of
8 Epidemiology and Biostatistics at the University of California, Berkeley, School of Public
9 Health, explains that "SARS-CoV-2 is readily spread through respiratory transmission.
10 All people are susceptible to and capable of getting COVID-19 because of the ease with
11 which it spreads. The virus is spread through droplet transmission; that is, when an
12 infected individual speaks, coughs, sneezes, and the like, they expel droplets which can
13 transmit the virus to others in their proximity." Reingold Decl. at ¶ 8. It is estimated that
14 one infected person infects two to eight other individuals and some "superspreaders" cause
15 widespread infection. *Id.*

16 Because there is no vaccine, the current recommendations for avoiding infection
17 include isolation, social distancing, frequent handwashing, wearing masks, and
18 disinfecting surfaces. *Id.* at ¶ 9. "[C]rowded indoor rooms, such as dormitories, with poor
19 ventilation, are prime environments for the spread of SARS-CoV-2 infection. Prolonged
20 confinement in such spaces dramatically increases the transmission of SARS-CoV-2
21 infection and it is particularly important that people at high risk of serious injury from
22 SARS-CoV-2 not be exposed to those environments." *Id.* at ¶ 19.

23 Seven out of the nine deaths in CDCR thus far have come from people who were
24 housed in dormitories at CIM. In light of the risk of further deaths and serious harm,
25 "prison cells rather than dormitories should be used to house patients who are at medically
26 high risk, even in prisons where there is not yet an outbreak." *Id.* at ¶ 20. Since CDCR's
27 current and past measures have failed to stem outbreaks and stop the spread, it is
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1 imperative that vulnerable patients receive additional protection immediately. *Id.* at ¶¶ 17,
2 23. Therefore, Defendants must be directed to work with the Receiver to identify the
3 vulnerable patients who are most at risk, test them for COVID-19, and transfer those in
4 dormitories to cells with other people who have tested negative. Defendants have
5 indicated that they are transferring approximately 700 people high risk people from the
6 CIM dorms to 15 other prisons. This assessment and transfer process must be extended
7 system-wide.

8 **B. Population Reduction Measures**

9 According to Defendants, “CDCR does not currently plan to conduct additional
10 early inmate releases because it believes that it has taken and continues to take sufficient
11 appropriate steps to improve the safety of inmates and staff in its prisons through social
12 distancing, screening, enhanced cleaning and sanitation, staff and inmate education, and
13 increased testing.” Joint Case Management Conference Statement, ECF No. 3328, May
14 20, 2020, at 10. However, as the Receiver informed the Court at the May 21 Case
15 Management Conference, the population reduction measures that CDCR undertook in the
16 early days of the pandemic had a significant positive impact on State’s ability to contain
17 the deadly spread of the virus in the prisons. See also Reingold Decl. at ¶ 24. Defendants
18 are therefore rejecting measures they can take – and have taken in the past – to save lives.

19 In fact, the State is already planning significant additional population reductions in
20 the coming years, including the closure of at least one prison. See Governor’s Revised
21 Budget Summary 2020-21, found at [http://www.ebudget.ca.gov/budget/2020-](http://www.ebudget.ca.gov/budget/2020-21MR/#/BudgetSummary)
22 [21MR/#/BudgetSummary](http://www.ebudget.ca.gov/budget/2020-21MR/#/BudgetSummary), at 83.

23 In this state of emergency, where CDCR prisons continue to experience severe
24 outbreaks and patients continue to die, the State refuses either to repeat measures already
25 proven successful or to speed up measures already planned over the course of the next
26 year. The refusal is baffling, and profoundly dangerous to members of the Plaintiff class.

Moreover, Director Gipson, Deputy Directors, and Associate Directors from CDCR's Division of Adult Institutions are conducting tours to verify compliance at other institutions.

Plaintiffs' next tour is scheduled at California Medical Facility (CMF) on Friday, May 29. This tour will occur in person.

B. Increased COVID-19 Testing

As Defendants anticipated in their last status report to the Court, there has been a significant increase in the level of testing throughout the prisons since last week. As of May 1, only 1,469 COVID-19 tests had been performed on inmates statewide. As of May 27, the number of completed inmate tests has jumped to 11,808, a rate approximately three times the testing rate of California and the United States in general. Defendants anticipate that the level of testing will continue to quickly rise. And, as discussed more fully below, staff testing is also increasing.

C. Efforts To Ensure The Safety Of Medically High Risk Inmates at CIM

Although the Receiver has not drafted formal written guidelines and procedures concerning high-risk³ inmates during the pandemic, the following describes Defendants' understanding of the Receiver's strategy for protecting high-risk inmates during the

³ The CCHCS Health Care Department Operations Manual at Chapter 1, Article 2, section 1.2.14 sets forth the medical classification system, including the medical factors that are considered in making patient placement decisions. The policy also defines "high risk" to include: (1) the chronic care of complicated, unstable, or poorly-controlled common conditions (e.g., asthma with history of intubation for exacerbations, uncompensated end-stage liver disease, hypertension with end-organ damage, diabetes with amputation); (2) the chronic care of complex, unusual, or high risk conditions (e.g., cancer under treatment or metastatic, coronary artery disease with prior infarction); (3) implanted defibrillator or pacemaker; (4) high risk medications; and (5) transportation over a several day period would pose a health risk, such as hypercoagulable state. Those risk categories, which were established pre-pandemic. As Defendants understand it, inmates who are particularly at risk of a bad outcome if they contract COVID-19 are: (1) over age 65, (2) obese, and (3) suffer a kidney insufficiency.

1 COVID-19 pandemic:

- 2 • High-risk inmates are to be sheltered in place so long as they are in COVID-
- 3 free facilities within a particular institution;
- 4 • If a facility housing high-risk inmates has an outbreak of COVID-19, high-
- 5 risk inmates who are COVID negative should be moved to a facility that is
- 6 COVID-free within the same institution;
- 7 • If it is determined that the risk to shelter in place for COVID-negative high-
- 8 risk inmates is greater than transferring patients due to the prevalence of
- 9 COVID within the institution, negative high-risk inmates should be
- 10 considered for transfer to another institution.

11 Defendants' understanding is that this strategy is based in large part on the concept
 12 that unnecessary transfers of inmates increase the risk of spreading COVID-19 throughout
 13 the system, and that there are additional considerations, such as maintaining continuity of
 14 care, and ordinary risks associated with moving vulnerable populations that weigh against
 15 unnecessarily transferring high-risk inmates. Furthermore, as testing throughout the prison
 16 system increases, it should become easier to mitigate the risk of high-risk inmates by
 17 confirming that they are housed in COVID-free facilities or units.

18 Because COVID-19 has spread to every housing unit within CIM, the Receiver, in
 19 consultation with the Secretary, has directed that high-risk inmates at CIM who test
 20 negative for COVID-19 be transferred to facilities in institutions that remain COVID-free.

21 As noted above, the Secretary's visit to CIM last week confirmed the need for such
 22 transfers. The Receiver has notified CDCR that 691 high-risk inmates at CIM tested
 23 negative for COVID-19 and should be transferred out of CIM. CDCR immediately began
 24 the process of evaluating this group of inmates to determine where they could be
 25 transferred based on their case factors. CDCR anticipates that the transfer of this group of
 26 inmates will begin by the end of this week.

27 Under the Receiver's policy, other high-risk inmates throughout the system will
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1 continue to shelter in place unless the facilities where they are housed have outbreaks of
2 COVID-19. In those cases, the evaluation of potential moves will be analyzed pursuant to
3 the strategies outlined above.

4 **D. Efforts To Limit The Spread Of COVID-19 Via Staff**

5 CDCR continues to screen staff every day before they enter the prisons, all staff are
6 required to wear cloth masks at a minimum in the prisons, and all staff have been ordered
7 to maintain physical distancing to the extent possible as they perform their duties in the
8 prisons. Staff may also be required to don an N95 mask, face shield, gloves and/or
9 additional PPE depending on assignment and duties.

10 CDCR recognizes that staff are potential vectors for the introduction of COVID-19
11 into CDCR's prisons, and CDCR has been working with the California Department of
12 Public Health, and in some cases with local county health departments, on plans and
13 strategies for staff testing. Earlier this month, 250 staff were tested at California Men's
14 Colony and 150 staff were tested at California Institution for Women. Beginning this
15 week, COVID-19 testing of all staff at CIM and Avenal State Prison will commence.
16 CDCR will continue to work with State and local public health professionals on staff-
17 testing strategies in the coming days and weeks to further mitigate the risk of spread of
18 COVID-19 in CDCR's institutions.

19 Under normal operating procedures, custody staff are assigned to a particular
20 primary post where they work for five days each week. CDCR is making efforts to ensure
21 that primary-post positions are permanently filled, which should limit the number of
22 different staff who are working in various housing units. But in such a large and complex
23 system, it is impossible to completely and permanently limit the staff who work in various
24 locations throughout the prisons.

25 **E. CDCR's Efforts Regarding Cleaning**

26 CDCR plans to issue a supplemental memorandum to the prisons regarding
27 cleaning and physical distancing. The purpose of the memorandum is to provide
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1 clarification concerning cleaning requirements and to require institutions to provide
2 confirmation that they are complying with required cleaning and physical distancing rules.

3 The supplemental memorandum will require that captains and managers conduct
4 weekly inspections and complete check lists confirming compliance with rules for social
5 distancing, mask wearing, dorm-cohort separation, and increased cleaning and
6 disinfecting. The memorandum also provides an example of an appropriate shower
7 cleaning schedule.⁴

8 The memorandum will require the use of cleaning logs to document the cleaning of
9 showers, toilets, and sinks between use periods, and will require the use of gloves and
10 masks by the inmate porters who perform the cleaning. The memorandum will direct the
11 wardens at each institution to provide the logs to CDCR headquarters so that associate
12 directors can confirm compliance.

13 **F. Early Releases**

14 While CDCR is not currently planning to grant early release to additional inmates,
15 the State and CDCR continue to meaningfully evaluate this and other options on a daily
16 basis and will continue to provide updates in future filings. It is important to note that, at
17 the same time, institutional population has continued to decline. As reported last week,
18 CDCR has decided to maintain the closure of intake for an additional 30 days with the
19 exception of a very limited number of individuals from four counties. CDCR also
20 continues to release on parole or post release community supervision approximately 3,000
21 inmates each month. CDCR will continue to evaluate the situation and will consider all
22 options for mitigating risk and increasing physical distancing.

23 As noted above, the resumption of transfers from CIM and other facilities will
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25 ⁴ Last week, Defendants reported that the showers at one institution were cleaned after 83 uses.
26 Upon further inquiry, Defendants learned that the institution misunderstood the survey question
27 and provided the number of inmates living in a particular dorm rather than answering the question
28 pertaining to their cleaning schedule.

1 enable CDCR to more flexibly use its facilities to reduce density and expand social
2 distancing. CDCR will, as it always does, look to vacant, usable space to house inmates as
3 additional transfers are completed later this week and next, including the first internal
4 movement out of CIM since the outbreak began, as well as approximately 1,500 other
5 internal transfers scheduled for next week (which include mental health patients, transfers
6 out of reception centers, and transfers out of segregated housing).

7 Of course, early releases and internal transfers are only one factor to employ to
8 reduce the spread of the virus, and CDCR is working with its internal team and CCHCS's
9 public health experts to evaluate all available options on an ongoing basis. Further, as
10 stated below, CDCR is also vetting public health experts and will explore additional
11 options with the expert once retained.

12 **G. Road Map to Reopening Operations**

13 On May 22, 2020, CCHCS issued a memorandum to all wardens and chief
14 executive officers jointly signed by Connie Gipson, Director of the Division of Adult
15 Institutions, Dr. Joseph Bick, Director of the Division of Health Care Services, and Dr.
16 Steven Tharratt, Director of Health Care Operations and Statewide Chief Medical
17 Executive at CCHCS, entitled "COVID 19 Pandemic – Road Map to Reopening
18 Operations." The memorandum outlines Phase 2 Operations within CDCR/CCHCS,
19 including permissible activities and strategies to continue to mitigate and prevent the
20 spread of the virus, including modified reception center intake, screening, housing, testing,
21 social distancing and separation of populations. The memorandum also attaches a "Covid
22 Screening and Testing Matrix for Patient Movement," which provides clear direction to
23 institutions regarding the testing and housing of inmates under particular movement
24 scenarios. For instance, the matrix indicates that patients who are transferring from a
25 county jail into a CDCR Reception Center must be placed in quarantine and cohorted for
26 14 calendar days and offered testing. Inmates who screen positive must not be transferred;
27 asymptomatic inmates who refuse testing must be placed in Orientation Status for 14
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1 calendar days and reoffered testing at the new institution. Inmates who are a returning
2 from hospitalization of 24 hours or longer or an emergency department visit must be
3 placed in quarantine for 14 calendar days and offered testing.

4 The memorandum further mandates that the following categories of inmates must
5 be tested: (1) all patients entering CDCR from county jail must be offered testing within 24
6 hours of arrival; (2) all patients transferring to another CDCR institution or camp; (3) all
7 patients returning from an outside healthcare facility shall be offered testing within 24
8 hours of their return; (4) all patients returning from an out-to-court appearance that
9 included at least one night away shall be offered testing within 24 hours of their return; and
10 (5) all patients to be released back into the community.

11 The memorandum also explains when patients who have been previously diagnosed
12 with COVID-19 can be released from isolation, and further reiterates when cloth face
13 coverings must be worn by staff and inmates. The memorandum also states that “basic
14 public health and environmental hygiene efforts must continue indefinitely,” including
15 hand washing, use of personal protective equipment, and disinfection of all shared and
16 frequently used surfaces.

17 **H. Update Regarding Expert Retention**

18 Defendants investigated several candidates and are in the process of vetting a public
19 health medical expert for retention in this matter following this Court’s suggestion at the
20 last case management conference. However, Defendants continue to work in collaboration
21 with the Receiver and his public health experts to address this crisis.

1 DATED: May 27, 2020

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3 By: /s/ Alison Hardy

4 ALISON HARDY

5 Attorney for Plaintiffs

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7 DATED: May 27, 2020

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